

McGREGOR W. SCOTT
United States Attorney
RICHARD J. BENDER
Assistant U.S. Attorney
501 I Street, 10th Fl.
Sacramento, California 95814
Telephone: (916) 554-2731

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	
)	CR. NO. S-04-440 EJG
Plaintiff,)	
)	STATUS REPORT AND
v.)	REQUEST FOR CONTINUANCE;
)	ORDER
CHARLES DAVID THOMPSON,)	
)	
Defendant.)	

The defendant has pending both the above captioned criminal case and a related civil forfeiture proceeding concerning the defendant's residence (Civ. No. S 04-2242 EJG), which forfeiture case is based on the offense conduct charged in the criminal case. The parties have worked out almost all the details of a plea agreement which would settle this criminal case. However, there remains the issue of how to resolve the forfeiture.

The government wants to obtain a global settlement of both cases to avoid piecemeal litigation. By coming to a global settlement, the defendant hopes to somewhat reduce his sentence in the criminal case and to avoid forfeiting his total interest in the property in the civil case. The government is willing to accept a \$20,000 cash payment in lieu of the defendant's full

1 interest in the property (his community property share in the
2 jointly owned real property). The problem is that the defendant
3 does not have cash or savings in the amount of \$20,000 to make
4 the payment and hopes to get these funds out of his interest in
5 the equity of the property. The property has total equity of
6 about \$100,000, and is jointly owned by the defendant and his
7 wife.

8 To get the \$20,000 in equity out of the house, the options
9 are either for them to refinance the property (to take some of
10 the equity out) or to sell the property and divide up the
11 proceeds. The first option (refinancing) requires the
12 defendant's wife's approval and her ability to make increased
13 mortgage loan payments since the defendant will be incarcerated
14 for the next few years. The second option requires the
15 government to take over the defendant's entire interest in the
16 property, force a (judicial) sale, and take the government's
17 \$20,000 out of the net proceeds of the sale (with the remainder
18 going to the defendant or the defendant's wife according to their
19 respective interest).¹ While this option would not require the

20
21 1. The problem with this option is that once the government
22 has assumed the defendant's interest in the property, it belongs
23 to the U.S. Government. Thereafter, the decision as to whether
24 to remit to the defendant all but \$20,000 of the proceeds from
25 the defendant's interest in the property would be vested in
26 officials from the Asset Forfeiture Section of the Department of
27 Justice. Although the U.S. Attorney's Office could make a
28 recommendation, such recommendation would not be binding on that
office. Moreover, there is no guarantee that the Court would
order the property to be sold because, pursuant to 18 U.S.C.
Section 983(d) (5), if the Court finds the wife to be an innocent
owner, it can (1) sever the property [not possible here], (2)
permit the government to sell the property and split the
proceeds, or (3) permit the innocent owner to remain on the

1 approval of the defendant's wife, the issue of the respective
2 interest in the property would undoubtedly complicate matters
3 (since the wife's attorney has taken the position that she has
4 more than a 50% community-property ownership interest). This
5 process is further complicated by both the fact that the
6 defendant is estranged from his wife and because the wife is
7 represented by an attorney in the forfeiture proceedings, which
8 attorney has been difficult to contact and has been no help in
9 attempting to resolve the matter.

10 At this point, counsel for the government and the defendant
11 need additional time to attempt to resolve this forfeiture issue
12 before we are ready to proceed forward with the entry of guilty
13 pleas. Defense wants an opportunity to work with the attorney
14 representing the wife to see if they can agree on refinancing the
15 property to take \$20,000 in equity out to pay the government.
16 Thus, it is requested that the court appearance for the entry of
17 plea, presently on the Court's calendar for Friday, August 5,
18 2005, be continued to Friday, September 9, 2005, to allow the
19 parties to work out this problem. [The government will also be
20 requesting in a pleading to be filed in that case that a status
21 conference be scheduled in the forfeiture case for August 19,
22 2005.] It is also requested that time be excluded in this case
23 from calculation under the Speedy Trial Act from August 5, 2005
24 to September 9, 2005, pursuant to 18 U.S.C. §
25 3161(h)(8)(B)(ii)(case complexity due to connection to the
26 pending civil forfeiture proceeding), with the Court finding that
27 _____
28 property and give the government a lien.

//

//

the necessity for the continuance outweighs the interest of the public and the defendant in a speedy trial.

Dated: August 5, 2005

McGREGOR W. SCOTT
United States Attorney

By: /s/
RICHARD J. BENDER
Assistant U.S. Attorney

Dated: August 5, 2005

/s/
TIMOTHY L. ZINDEL
Attorney for Defendant

O R D E R

The date for judgment & sentencing of 8/15/05 has been vacated and will be reset at the hearing on September 9, 2005.

It is so ORDERED,
this 4th day of August, 2005.

/s/ Edward J. Garcia
EDWARD J. GARCIA
Senior, U.S. District Judge